

Before the

**FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
)  
Application by Verizon New England, Inc., )  
Verizon Delaware Inc., Bell Atlantic )  
Communications, Inc. (d/b/a Verizon Long )  
Distance), NYNEX Long Distance )  
Company (d/b/a Verizon Enterprise Solutions), )  
Verizon Global Networks, Inc., and Verizon )  
Select Services, Inc., for Authorization to Provide )  
In-Region, InterLATA Services in )  
New Hampshire and Delaware )

WC Docket No. 02-157

**DECLARATION OF BENJAMIN THAYER  
ON BEHALF OF FREEDOM RING COMMUNICATIONS, L.L.C.  
D/B/A BAYRING COMMUNICATIONS**

Based on my personal knowledge and on information learned in the course of my duties,  
I, Benjamin Thayer, declare as follows:

1. My name is Benjamin Thayer and I am President and Chief Operating Officer of Freedom Ring Communications, L.L.C. d/b/a BayRing Communications ("BayRing"). I have been employed by BayRing, which was the first carrier to receive CLEC certification in New Hampshire, for more than six years. My business address is 359 Corporate Drive, Portsmouth, NH, 03801. In my capacity as President and COO of BayRing I am responsible for the oversight of all activities of the company. During the last year, I have, on behalf of BayRing, been involved New Hampshire Public Utilities Commission ("NH PUC") Docket DT 01-151 which addressed whether Verizon had met the requirements of Section 271 of the Telecommunications Act of 1996 to provide in-region, interLATA service in New Hampshire. I participated in this docket through both written and oral testimony. I also attended all hearings in this docket.

2. On March 1, 2002, subsequent to final hearings in docket 01-151, the NH PUC issued a letter outlining its position relative to Verizon's 271 application. In that letter, the commission listed ten conditions it required Verizon to meet in order for Verizon to meet the requirements of the Section 271 competitive checklist.

3. Following the March 1 letter, Verizon carried out a public relations and political lobbying campaign in an attempt to circumnavigate the regulatory process and force the NH PUC to support Verizon's 271 application. Commissioner Nancy Brockway accurately described Verizon's actions in the following statement "It has appealed to the public and the legislature, with an incessant campaign for us to grant it long distance entry, meanwhile making only modest concessions to our authority and our policy determinations."<sup>1</sup>

4. On March 15, Verizon sent a letter to the NH PUC contesting four of the 10 conditions, including the NH PUC's condition in regard to Checklist Item 2, which required Verizon to "lower and update" its UNE rates. Verizon New Hampshire UNE loop rates are currently the highest in the northeast. The NH PUC's condition would have set those rates at a mid range relative to Maine and Vermont, states of similar demographics that surround New Hampshire.

5. Ten days later, on March 25, 2002, Verizon began a state-wide newspaper advertising campaign, the crux of which was that New Hampshire was harmed because the NH PUC had not yet supported Verizon's 271 application, while neighboring state commissions had given such support. The advertising campaign urged the NH PUC to "help give consumers what New York, Massachusetts, and other Northeast states already have—lower rates . . . and great

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<sup>1</sup> DT 01-151, Deliberations Statement of Commissioner Brockway at 1.

long distance service from Verizon,” and sought to stimulate a flow of letters to the NH PUC clamoring for Verizon entry into long distance. A copy of an advertisement that constituted part of this campaign is attached as Attachment 1 hereto. The advertisement neglected to mention that other states had lowered Verizon’s UNE rates prior to expressing support of the 271 application.

6. As part of that campaign and at the behest of Verizon, the New Hampshire Legislature’s Telecommunications Oversight Committee held four hearings to examine the status of DT 01-151. The fact that the Committee held these meetings can be fairly described as extraordinary and atypical. To my knowledge, this committee rarely, if ever, has held hearings to review PUC docket status.

7. BayRing Communications had representation at each of these meetings. I personally attended three of the hearings. While Representative John Thomas was the chairman for these hearings, Representative Roy Maxfield, a 30-year employee of Verizon and its predecessor companies, was by far the most vocal member at each of the hearings I attended. Verizon was encouraged to discuss its positions at each meeting. Other parties, including CLECs such as BayRing, were prohibited from speaking at least two of the hearings.

8. At the hearings, Representative Maxfield, and to some extent other members of the Telecommunications Oversight Committee, persistently accused the NH PUC of improperly blocking Verizon’s entry into the New Hampshire long distance market. In the context of expressing his displeasure with the NH PUC’s imposition of the March1 conditions for a favorable recommendation in this matter, Rep. Maxfield told the NH PUC representatives that

“you work for us,” which I interpreted as an assertion that the NH PUC should allow the Telecommunications Oversight Committee to dictate its policy determination in this matter.

9. At the April 26 hearing, NH PUC Telecommunications Division Director Katherine Bailey requested that the Committee allow CLEC representatives to address certain issues raised by Verizon. Rep. Maxfield’s response to Ms. Bailey was “I don’t care about the CLECs.”

10. The lack of interest in local competition expressed by Rep. Maxfield was consistent throughout the four meetings as well as in the two letters written to the NH PUC by the Telecommunications Oversight Committee. In both of these letters, the Telecommunications Oversight Committee expressed its concern that Verizon was being delayed in its 271 application. However, neither letter addressed the status of the local telecommunications market in New Hampshire.

11. After three months of public and political lobbying by Verizon, the NH Commission on June 11, held a meeting at which the Commission stated that it would support Verizon’s 271 application despite Verizon’s refusal, among other things, to adjust UNE rates as proposed by the Commission March 1 letter. Each Commissioner read a prepared statement, with the majority of Commissioners expressing doubt that local competition was well served by this decision as well as expressing frustration regarding Verizon’s lobbying techniques. As further evidence of the Commission’s concern that Verizon’s UNE rates are set at an inappropriate level, the Commission that day announced it would open a docket to investigate Verizon’s cost of capital as well as other cost inputs that affect UNE rates.

12. Until this investigation is complete, local competition in NH will continue to be substantially handicapped. It should be noted that while the NH PUC has attempted to set a relatively short time frame for the completion of this cost docket, CLECs operating in New Hampshire have yet to see the rates established in the original cost docket which began in 1997, although we understand that they may be reflected in Verizon's September bills. With this history of rate proceedings taking years to result in new rates, competitors can hardly have confidence that the newly opened proceeding will result in revised rates in the foreseeable future.

13. Allowing Verizon to continue to charge the highest rates in the region for the foreseeable future will only serve to continue the erosion of competition in New Hampshire and work in direct contradiction to the goals of the Telecommunications Act of 1996 as promoted by this Commission. Verizon's effective bypass of the regulatory process through its political lobbying should not be rewarded by the FCC. Instead, the FCC should acknowledge the transparent nature of what occurred in New Hampshire. The FCC should carefully consider the conditions set out in the NH PUC's March 1 letter. These conditions were based on an extensive record, in contrast with the June 14 Commission decision, which was solely the result of political pressure.

14. The more precise effect of the continued allowance of excessively high UNE rates to be charged by Verizon is the price squeeze experienced by CLECs such as BayRing. BayRing was the first CLEC authorized in both Maine and New Hampshire. As stated, since its inception I have been closely involved in all aspects of BayRing's operations, including continual review of the costs related to the provision of service. It has been, and remains, apparent that UNE rates in New Hampshire have resulted in a price squeeze for BayRing and other CLECs, particularly as they apply to the residential market. The NH PUC concurred in this assessment.

15. Given Verizon's UNE rates, the inability for even the most efficient CLEC to make money when serving New Hampshire's residential customers via Verizon's network has effectively stymied competition in this market. While CLEC costs may vary, a simple review of the expense elements experienced by any competitor attempting to serve the residential market with Verizon loops definitively demonstrates that it is a money-losing venture.

16. In fact, even if a CLEC had none of its own costs and attempted to provide residential service in the rural markets of NH, it would lose money. In these markets, the wholesale loop rate of \$25 exceeds the retail rate charged by Verizon by between \$5 and \$10.

17. When a CLEC's costs of sales, facilities, operations, billing and collection, local number portability and legal services are applied to the equation, the price squeeze becomes insurmountable. This is true in all markets of New Hampshire.

18. Attached to my Declaration as Attachment 2 is an updated price squeeze analysis that BayRing has developed for this proceeding. The analysis contains two tables. The first table sets forth what I believe, based upon my experience operating a New Hampshire CLEC is a very conservative estimate of the costs by zone (urban, suburban, and rural) that would be incurred by an efficient carrier that purchases Verizon's loops. The costs factored into the analysis are loop (Verizon's current UNE loop rates), sales (sales/marketing), facilities (collocation, switching and transport costs), operations (company overhead, not including sales and billing/collection costs) and billing/collection (costs for billing for services and collection costs). These costs do not include the \$29.52 in nonrecurring charges for the loop that BayRing will have to recover. *See* BayRing App. B, Tab 4, Exhibit 69B.

19. The second table looks at residential revenue. The residential revenue figures are derived from BayRing App. B, Tab 4, Exhibit 69B, which was the profitability analysis BayRing and Network Plus submitted to the New Hampshire PUC. The revenue figure is based on Verizon's retail rates by rate group in New Hampshire and includes subscriber line charge and features revenue. The figures also include a 10% discount, because if a CLEC hopes to win a Verizon customer it must charge less than Verizon.

20. Comparison of the figures in the two tables demonstrates that in all rate groups in all zones in New Hampshire an efficient CLEC cannot generate a profit by serving the residential customer. Exchanges in Rate Group E for all three zones provide the opportunity for the most revenue for the CLEC and are therefore a telling indicator of what margins a CLEC can expect. In the urban zone, even for those areas in Rate Group E, CLECs would face a negative margin of **[BEGIN PROPRIETARY] XXXX [END PROPRIETARY]**. Rate Group E in the suburban zone would produce a negative margin of **[BEGIN PROPRIETARY] XXXX [END PROPRIETARY]**, and Rate Group E in the rural zone would produce a negative margin of **[BEGIN PROPRIETARY] XXXX [END PROPRIETARY]**. In the other rate group areas in the urban, suburban, and rural zones the margins are even worse.

21. Thus, there is clearly a pronounced price squeeze, and even the reductions in rural rates did nothing to alleviate the price squeeze. Even if a CLEC could cobble together some speculative and increasingly diminishing toll and access revenue, the price squeeze precludes the

CLEC from serving the residential customer . Even if a CLEC could reduce its already spare overhead,<sup>2</sup> the price squeeze precludes competitive entry.

22. This is the reality that the NH PUC faced and sought to address in DT 01-151. Under pressure from Verizon and the Telecommunications Oversight Committee, they were forced to ignore this grim competitive reality and further the interests of Verizon. The public interest standard, as I understand it, requires that all markets in New Hampshire be open to competition at the time of Verizon's application. The competitive numbers we note in our Comments and the price squeeze we have demonstrated, and continue to demonstrate, unequivocally show that the New Hampshire residential market is not open to competition nor is there any hope that it will be in the future.

23. While Verizon claims there is residential competition in New Hampshire, a careful review of the data provided by Verizon indicates that the vast bulk of New Hampshire residential customers served by CLECs are served by AT&T. AT&T does not use Verizon loops to serve its customers. Instead, AT&T provides voice services as incremental add-ons to its cable and Internet product. These services are fully provisioned on AT&T cable facilities.

24. Recognizing the financial disincentives created by Verizon's high loop rates, in April, 2002, BayRing altered its residential pricing for customers not affiliated with BayRing business accounts. BayRing residential rates, which are more reflective of true costs, are now similar to our business rates. This change has effectively negated our ability to obtain additional residential customers. Currently, residential customers account for approximately one tenth of

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<sup>2</sup> It should be noted that given the downturn in the telecommunications industry CLECs have already had to reduce their overhead levels to the bare minimum necessary to provide quality service.

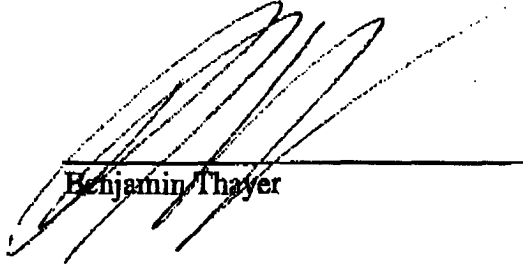


one percent of total BayRing revenue and we have signed up only one customer since our rates were changed to reflect cost.

25. Representatives of other CLECs serving New Hampshire have told me that their companies have no choice but to pursue a non-residential business strategy. To the extent that Verizon UNE rates are allowed to remain at the current levels, a price squeeze will continue and CLECs providing service in New Hampshire will be forced to cream skim only the largest, most profitable business accounts. The obvious result of this scenario will be a complete lack of local competition for the majority of telecommunications consumers in New Hampshire. This I believe is contrary to the intent of Congress, the FCC and the NH PUC.

26. This concludes my declaration.

I, Benjamin Thayer, declare under the penalties of perjury that the facts set forth above are true and correct to the best of my knowledge, information, and belief.

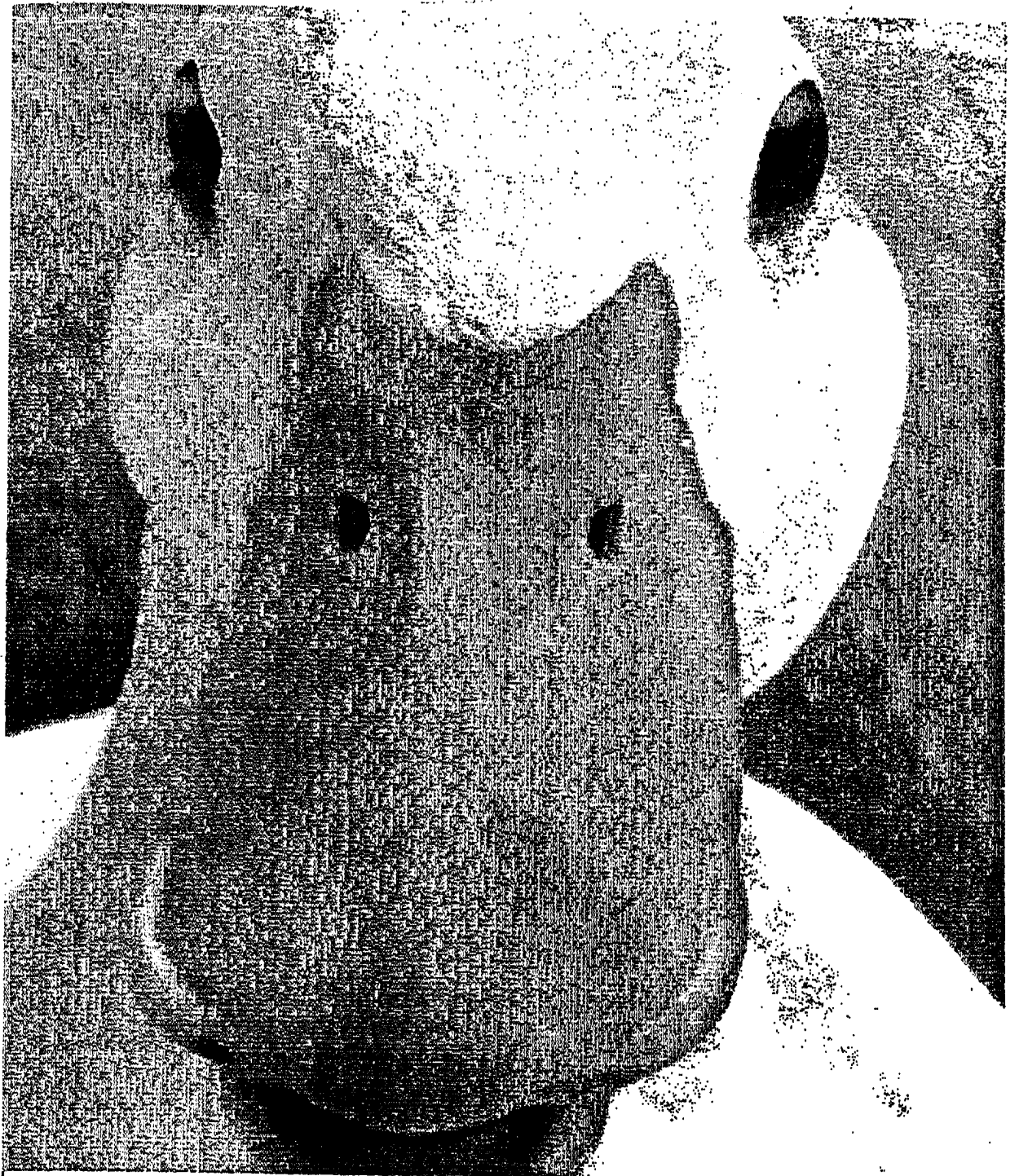


Benjamin Thayer

Executed on July 17, 2002

**ATTACHMENT 1**

Verizon Advertisement



**There's  
nothing funny  
about big bills.**

When it comes to long distance phone bills, people in New Hampshire have bigger bills than people in Massachusetts, Rhode Island, Connecticut, New York and Pennsylvania.

And there's nothing funny about *that*.

State regulators in these other states encouraged *competition* — by supporting Verizon's entry into the long distance market.

Other states right next door are moving ahead too — both Maine and Vermont have agreed Verizon should be permitted to offer long distance.

And where Verizon long distance is available, the results are impressive.

An independent study finds that New York's local and long distance rates are dropping by about \$700 million annually. That's an annual savings of \$84 to \$324, per customer<sup>1</sup>.

And in New Hampshire, a similar study found consumers here could save more than \$70 million in the first year after Verizon's entry into the long distance market.<sup>1</sup> That's nearly \$200,000 a day in projected savings!

Meanwhile consumers gave Verizon's residential long distance service the highest rating for "overall satisfaction" — ahead of Sprint, WorldCom... and AT&T<sup>2</sup>.

New Hampshire's Public Utilities Commission can help give consumers what New York, Massachusetts, and other Northeast states already have — lower rates... and great long distance service from Verizon.

And leave the big bills ... to the ducks.



To learn more go to [www.verizon.com](http://www.verizon.com)

<sup>1</sup>According to an independent study by the Telecommunications Research Action Center ([www.trac.org](http://www.trac.org))

<sup>2</sup>Yankee Group annual Technologically Advanced Family ® Survey, 2001

**Attachment 2**

**Price Squeeze Analysis**

**Contains Confidential Information**

**[BEGIN PROPRIETARY]**

**[END PROPRIETARY]**